

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: EDUCATIONAL TESTING
SERVICE PRAXIS
PRINCIPLES OF LEARNING
AND TEACHING: GRADES
7-12 LITIGATION

MDL NO: 1643
SECTION: R(5)
JUDGE VANCE
MAG. JUDGE CHASEZ

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
2006 MAR 13 AM 11:21
LORETTA G. WHYTE
CLERK

THIS DOCUMENT RELATES TO ALL CASES

PRELIMINARY APPROVAL OF SETTLEMENT ORDER

Upon consideration of Settlement Class Counsel's duly noticed Motion for Preliminary Approval of Settlement and Class Certification, (hereinafter, the "Motion"), and having considered the Motion and supporting memoranda, the oral arguments of counsel and the applicable law, and further recognizing that the Court will issue an Order regarding Class Certification subsequent to this Order, and finding that the proposed Settlement set forth in the Settlement Agreement meets the applicable criteria for preliminary approval; the Court hereby FINDS and ORDERS, as follows:

1. Preliminary Approval of Settlement.

(a) The proposed settlement between the Class and ETS, which is set forth in the Settlement Agreement, appears to the Court upon preliminary review to be fair, reasonable, adequate, and the result of arm's-length negotiations between the Parties, is not the result of collusion, bears a reasonable relationship to the exposure and risks of the Parties, and is within the range of reasonableness to support possible final approval. Accordingly, the terms of the Settlement and the Settlement Agreement are hereby preliminarily approved in their entirety and made a part of this Preliminary Approval of Settlement Order, and shall be

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submitted to the Class Members for their consideration and for a hearing under Rule 23(e) of the Federal Rules of Civil Procedure on whether to grant final approval to the proposed Settlement.

(b) ETS shall pay into the Escrow Account Two Hundred and Fifty Thousand and No/100 Dollars (\$250,000.00) of the cash portion of the Settlement Fund, within seven (7) days after the signing of the Order certifying the Class. This installment of the cash portion of the Settlement Fund shall be deposited and held in trust with interest, pursuant to the terms of the Escrow Agreement and the Settlement Agreement, pending further orders of the Court.

(c) The form and execution of the Escrow Agreement and nomination of Hibernia National Bank of Louisiana as the Escrow Agent of the Escrow Account, to serve in that capacity under the Escrow Agreement and in accordance with all terms, provisions, and conditions contained therein and/or provided in the Settlement Agreement, are both hereby approved.

(d) The cash portion of the Settlement Fund to be deposited into the Escrow Account is designated as a Qualified Settlement Fund pursuant to the U.S. Internal Rev. Code Section 468B and shall be regulated according to the regulations promulgated thereunder. This Court shall assume continuing jurisdiction over the Escrow Account, and the Settlement Funds in such account may be invested, disbursed, paid and/or transferred in accordance with the provisions of the Escrow Agreement and/or the Settlement Agreement.

(e) In the event that the Parties fail to consummate the Settlement or the Settlement is not finally approved by the Court or not consummated for any other reason

whatsoever, then: (i) certification of the Class pursuant to the subsequent Order certifying the Class may be vacated by further Order of the Court, without prejudice to any positions of the Parties with respect to any procedural or substantive issues in the Litigation, including but not limited to, the rights of ETS to challenge any motion for class certification; and (ii) all of the other provisions in the Settlement Agreement regarding what the Parties' respective rights and positions shall be in this event will apply and remain binding and enforceable.

2. Fairness Hearing. A Fairness Hearing will be held before this Honorable Court at the United States Courthouse for the Eastern District of Louisiana at 10:00 a.m. on Wednesday, July 12, 2006, in order, *inter alia*, for the Court: to consider and determine whether (i) the proposed Settlement should be given final approval by the Court, ^{SSV} ~~(ii) the Class should be certified~~, and (iii) if any objection to the Settlement by Class Members has merit. In determining whether to enter an Order and Final Judgment, the Court will consider such other and further matters as may properly come before the Court in connection with the Fairness Hearing, including any motion for an award of attorneys' fees, costs and Settlement Administrative Costs. The Court may adjourn the Fairness Hearing, or an adjournment thereof, without further notice to Class Members other than by announcement and/or Order entered at the Fairness Hearing or any adjournment thereof. With regard to the preliminary approval of the settlement granted in this Order, other ancillary matters granted in this Order include the following:

- a. Any Class Member who desires to be excluded from the Class and thus the proposed Settlement must do so by making a Request for Exclusion in accord

with the provisions of Paragraphs 6.1 and 6.2 of the Settlement Agreement, postmarked on or before June 3, 2006.

- b. Objections by Class Members to the Settlement or other matter contained in the Settlement Agreement will be considered if made in writing and otherwise submitted as provided for in Paragraph 6.3 of the Settlement Agreement, properly filed with the Clerk of Court for the United States District Court for the Eastern District of Louisiana, with copies mailed to the Parties (as provided in the Settlement Agreement) on or before ten (10) days prior to the Fairness Hearing.
- c. Class Members may be heard orally in support of or in opposition to the proposed Settlement or otherwise, provided that they file with the Clerk of Court for the United States District Court, Eastern District of Louisiana, with copies mailed to the Parties (as provided in the Settlement Agreement) on or before ten (10) days prior to the Fairness Hearing, a written notification of the desire to appear personally or through an appearance of their counsel, indicating (if in opposition to the Settlement) briefly the nature of the objection.
- d. Settlement Class Counsel should be prepared at the Fairness Hearing to respond to any objections filed by such Class Members and to provide other information or evidence, as appropriate, bearing on whether the Settlement should be finally approved.

3. Notice. The proposed Notice to Class Members, attached as Exhibits “1” and “2” to the Settlement Agreement, is approved as to form and substance. The Court finds that the dissemination of the Notice to Class Members substantially in accord with the manner, method, and format set forth in Paragraph 5.8 of the Settlement Agreement, meets all of the requirements of applicable law, state and federal due process, is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Class Members of the Litigation, Settlement, conditional certification of the Class and other matters addressed in this Order. The Notice shall be disseminated to the Class Members as provided for in the Settlement Agreement commencing no later than 30 days prior to the date that Exclusion Requests and Objections must be filed.

4. Claim Forms. The proposed Claim Forms, attached, *in globo*, as Exhibit “O” to the Memorandum In Support Of Class Members Motion for Preliminary Approval Of Settlement and Class Certification, as well as the Settlement Agreement setting forth the dissemination of the Claim Forms and provisions requiring the submission of a completed Claim Form with full documentation, in order for a Class Member to qualify as a Participating Class Member and receive benefits available under the proposed Settlement, are hereby approved. The last date for submission of a completed Claim Form with full documentation, as required, is Monday, July 3, 2006.

5. Class Counsel Filings. Settlement Class Counsel will submit a memorandum in support of final approval of the Settlement and motion for attorneys’ fees, reimbursement of costs, and payment of all Settlement Administrative Costs, in accordance with law and the

local court rules.

6. Special Master. Patrick A. Juneau is hereby appointed Special Master to assist the Court, in cooperation and coordination with Class Counsel, to: (i) devise a plan for establishing appropriate reserves to be deducted from the Settlement Fund in order to establish the amount available from the Settlement Fund for distribution to Class Members or other contingencies; (ii) establish appropriate criteria for evaluation of claims of Class members; (iii) review and evaluate claims of Class Members in accordance with the criteria so established; (iv) establish proposed allocations for each Class Member in accordance with these criteria and evaluations; (v) prepare a proposed plan for distribution of the proposed allocations; and (vi) submit to the Court a report on the above, along with recommendations for the Court's consideration in proceeding with the allocation and distribution process following the Effective Date. The Special Master shall have the power to implement reasonable procedures designed to protect against and prevent payment of fraudulent claims and otherwise assure an acceptable level of reliability and quality control, and all other things necessary to promote fair, full and final settlement of claims and administration of claims and the disbursement process. The Special Master shall also exercise his rights and responsibilities as follows:

- 1) The Special Master shall perform the duties set forth in the Settlement Agreement, and Rule 53 of the Federal Rules of Civil Procedure which are incorporated into this Order by reference;
- 2) The Special Master shall have the authority to engage support personnel to

assist in the exercise of his duties and he shall communicate with Settlement Class Counsel with regard to the selection of attorneys who may assist him;

- 3) The Special Master shall be compensated from the Administrative Fund, as defined in the Settlement Agreement, in the amount of:
 - a) \$250.00 per hour for Mr. Juneau's services;
 - b) \$175.00 per hour for attorneys who assist Mr. Juneau;
 - c) \$65.00 per hour for paralegals who assist Mr. Juneau.

In the event the Special Master appoints additional administrative personnel to assist him in administering and managing the Settlement Fund who are not addressed in this Order, the Parties will file a supplemental motion and order to accommodate appointment of the same.

- 4) The Special Master shall submit to the Court, with a copy to counsel for the Parties, periodic-reports with respect to the administration and management of the Settlement Fund.
- 5) The Special Master may communicate *ex parte* with the Court at the Special Master's discretion without providing notice to the Parties.
- 6) The Special Master may initiate contact and communicate with Settlement Class Counsel, defense counsel, or any counsel for any claimant as he deems appropriate, with respect to the efficient administration and management of the Settlement Fund in rendering decisions he is authorized to make under the terms of the Settlement Agreement. However, such communications shall

not involve the substance or merits of the claim. If the Special Master initiates any such contact with defense counsel, or counsel for any claimant, he shall assure that Settlement Class Counsel are made aware of and have the right to participate in any such communication.

- 7) All decisions rendered by the Special Master shall be in writing and shall be made of record.
- 8) The Special Master shall not have authority to:
 - a) Conduct any pre-trial or trial proceedings, except for such conferences as the Special Master deems necessary for purposes of administering and managing the Settlement Fund;
 - b) Sanction any party;
 - c) Consider the amount of the Settlement Fund or exhaustion thereof as a limitation in making an award. In the event the total sums awarded to the Participating Class Members exceed the total sum available in the Settlement Fund, the awards shall be reduced and paid on a *pro rata* basis;
- 9) The Special Master shall preserve all Claims Forms, supporting documentation, and written communications from Class Members for a period of five (5) years from the date of final distribution.

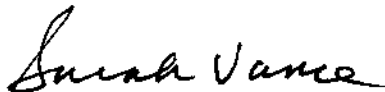
7. Disbursing Agent. The accounting firm of Bourgeois, Bennett, LLC, CPAs, Metairie, Louisiana, is hereby appointed as the Court Appointed Disbursing Agent

("CADA") in connection with this settlement and shall perform the duties and responsibilities of the CADA as set forth in the Settlement Agreement, under the supervision of the Court or its designee, and as such, is hereby charged with the responsibility, in conjunction with the Special Master, of maintaining records pertaining to receipts and disbursements; managing the financial aspects of claims, fees, costs and expenses and the computerized generation and preparation of all data regarding evaluation of claims; managing the financial aspects of the eventual disbursement of the Settlement Fund, including filing tax returns; and the administration, with the Escrow Agent, of the Settlement Fund, subject in all respects to further orders and direction of the Court.

8. Notice Administrator. Hilsoft Notifications is hereby appointed Notice Administrator and is charged with the duties and responsibilities of implementing the notice plan, which includes, but is not limited to, causing the Notices to be disseminated to Class Members.

9. Contingency Fee Contracts. Any contingency fee contracts affecting the representation of Class Members which are dated after December 17, 2005 shall not be enforceable.

New Orleans, Louisiana this 13th day of March, 2006.



SARAH S. VANCE, JUDGE
UNITED STATES DISTRICT COURT